

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

WILLIAM THOMAS PERRY, #00650,

Petitioner,

v.

ACTION NO. 2:06cv368

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction on March 14, 2006, in the Circuit Court of Southampton County, Virginia, for one count of domestic assault (misdemeanor) and one count of malicious wounding. Petitioner was sentenced to a total of seventeen (17) years in prison.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge was filed on November 20, 2006, denying Petitioner's motions for an evidentiary hearing and motion for appointment of counsel, and recommending dismissal of the petition. By copy of the report, each party was advised of his right to file

written objections to the findings and recommendations made by the Magistrate Judge. On November 29, 2006, the Court received a letter from Petitioner that the Court construes as Petitioner's objections to the Magistrate Judge's report and recommendation. On December 14, 2006, the Court received a document from Petitioner entitled "Petitioner [sic] Brief in Support of Motion to Grant 2254 Writ of Habeas Corpus Petition for His Unlawful Confinement," which the Court construes as a supplement to his objections. The Court received no response from Respondent.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Magistrate Judge's report, and having made de novo findings with respect to the portions objected to,<sup>1</sup> does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on November 20, 2006, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITHOUT PREJUDICE to allow Petitioner an opportunity to exhaust his state court

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<sup>1</sup>The Court notes that in his objections Perry continues to assert that he filed a state court habeas petition with the Clerk of Court for Southampton County on March 6, 2006 challenging his unlawful confinement. As the Magistrate Judge found, however, the evidence and argument upon which Perry relies is insufficient to establish that a state habeas petition was properly filed. See Magistrate Judge's Report and Recommendation, at 2 & n.1. Specifically, the Court notes the uncontradicted statement by Wayne M. Cosby, Clerk of the Circuit Court for the County of Southampton, that as of September 19, 2006 there was "no record of a Habeas properly filed before the Court in reference to [Perry]." Respondent's Brief in Support of Motion to Dismiss and Rule 5 Answer, Exhibit C.

remedies before proceeding with a habeas corpus petition in this Court.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

Entered on January 3, 2007

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/s/  
Rebecca Beach Smith  
United States District Judge